Supreme Court, U.S.
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No. 84-1002

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

UNITED TELECOMMUNICATIONS, INC., *et al.*,
Petitioners,

v.

DALE E. SAFFELS, United States District Judge for the District of Kansas,
Respondent,

(PHYLLIS WILSON HOFFMAN and EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Real-Parties-in-Interest.)

SUPPLEMENTAL BRIEF FOR UNITED TELECOMMUNICATIONS, INC., ET AL.

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SUPPLEMENTAL BRIEF FOR UNITED TELECOMMUNICATIONS, INC., ET AL.

This Supplemental Brief for Petitioners, United Telecommunications, Inc., *et al.*, is filed, pursuant to Rule 22.6 of the Court's Rules, to bring to the Court's attention a Memorandum and Order of the District Court entered in this cause on March 6, 1985. The petition herein was filed on December 24, 1984; a Reply Brief was filed by Petitioners on February 27, 1985.

In its March 6, 1985, Memorandum and Order (pertinent extracts from which are reproduced in the Appendix hereto), the District Court denied Petition-

ers' motion for an order enforcing the District Court's October 3, 1984 ruling (see Pet. Cert. 6, 16a) that plaintiff Hoffman could not "retain the option to proceed as class representative," and prohibiting plaintiff Hoffman's counsel from participating in the representation of the class which the EEOC had been designated by the District Court to represent. The District Court found in its March 6, 1985, Memorandum and Order that "[t]he EEOC has specifically authorized plaintiff's counsel, David Waxse, to coordinate discovery on behalf of the EEOC" (App. 2a). However, relying for the most part on its further finding that "there is no conflict between the interests of Hoffman and the EEOC", the District Court concluded that there is "nothing objectionable in . . . allow[ing] Mr. Waxse to coordinate and *lead* the discovery efforts in this case" [emphasis added] (App. 2a).

Petitioners submit that the District Court's action on March 6, 1985, shows dramatically how the courts below have in this case countenanced the circumvention of Section 706 of Title VII and Rule 23 of the Federal Rules of Civil Procedure. Thus, we have now come full circle. First, the EEOC was erroneously allowed to bypass Section 706's administrative prerequisites and to assume the mantle of representing the class named in Hoffman's suit. Then, in view of the status thus granted the EEOC, Hoffman was ruled ineligible to represent that class.[1] Now, totally inconsistent with the latter ruling, Hoffman's counsel, who necessarily would have been the *real and active* rep-

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[1] In the March 6, 1985, Memorandum and Order, the District Court acknowledged that "[o]n October 3, 1984, this court held that plaintiff Hoffman may not retain the option to proceed as class representative" (App. 2a).

resentative of the class had Hoffman in fact achieved Rule 23 class certification, is to be allowed to "lead" the discovery efforts with respect to the class. In sum, the procedural charade by the EEOC and Hoffman has truly emasculated the statute and the applicable procedural rules.

Respectfully submitted,

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Dated: March 12, 1985

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

Civil Action No. 76-223-C2

PHYLLIS WILSON HOFFMAN,
Plaintiff,

and

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Plaintiff/Intervenor,

v.

UNITED TELECOMMUNICATIONS, INC., *et al.*,
Defendants.

MEMORANDUM AND ORDER

There are two motions before this court: defendants' motion for enforcement of the court's order of October 3, 1984; and defendants' motion for reconsideration of the court's order of December 19, 1984. The court has determined that oral argument would not be of material assistance. . . .

* * * *

With regard to the motion for enforcement, some background is important. By order dated April 11, 1984, this court allowed plaintiff/intervenor Equal Employment Opportunity Commission [hereinafter EEOC] to act as the class representative without requiring the EEOC to satisfy the class representative

requirements of Rule 23, Federal Rules of Civil Procedure. On October 3, 1984, this court held that plaintiff Hoffman may not retain the option to proceed as class representative. Subsequent to these orders, plaintiff and plaintiff/intervenor have jointly prosecuted the case, including discovery requests. The EEOC has specifically authorized plaintiff's counsel, David Waxse, to coordinate discovery on behalf of the EEOC. Defendants' motion seeks an order directing plaintiff Hoffman's counsel, Mr. Waxse, and Karen Plax, to cease their participation in the "class" aspects of this case.

In the prosecution of civil rights lawsuits, the federal courts encourage enforcement of the civil rights laws and make every effort not to impede those seeking to enforce the laws. The courts attempt to reach the substantive merits of such claims, guided always by the Federal Rules of Civil Procedure and the laws of the United States. Mr. Waxse is counsel for plaintiff Hoffman and has been involved in this lawsuit, including its class aspects, since 1976. He is the counsel whom plaintiff and the EEOC believe is most knowledgeable and familiar with the facts of this case. In the context of this employment discrimination action, the court finds nothing objectionable in the cooperation exhibited between plaintiff and the EEOC to allow Mr. Waxse to coordinate and lead the discovery efforts in this case. There is no conflict between the interests of Hoffman and the EEOC. This cooperation between the EEOC and plaintiff Hoffman can only encourage expeditious and aggressive discovery and resolution of this lawsuit.

Defendants' motion would only hamper the EEOC's efforts as class representative by negating the EEOC's

decision to rely on Mr. Waxse's familiarity with the case, thus defeating the federal policy of encouraging resolution of employment discrimination lawsuits on the merits. So long as Mr. Waxse and Ms. Plax remain counsel of record in this case, and the EEOC continues to authorize them to participate, on behalf of the EEOC, in the class aspects of this case, the court declines to direct them not to participate. Thus, there is no matter in the October 3, 1984, order which requires the court's enforcement.

* * * *

IT IS FURTHER ORDERED that defendants' motion for enforcement of the court's order dated October 3, 1984, is hereby denied.

DATED: This 6 day of March, 1985, at Kansas City, Kansas.

/s/ Dale E. Saffels
DALE E. SAFFELS
United States District Judge